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In the
Supreme Court of the United States

Christopher Wade,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Fifth Circuit's application of harmless error doctrine pursuant to *United States v. Guzman-Rendon*, 864 F.3d 409 (5th Cir. 2017) violates this Court's precedent in *Gall v. United States*, 552 U.S. 38 (2007) by allowing sentencing courts to bypass correct calculation of the U.S. Sentencing Guidelines?

II. Whether the Fifth Circuit's application of harmless error doctrine pursuant to *United States v. Guzman-Rendon*, 864 F.3d 409 (5th Cir. 2017) violates this Court's precedent in *Gall v. United States*, 552 U.S. 38 (2007) by failing to allow for meaningful appellate review?

PARTIES TO THE PROCEEDING

Petitioner is Christopher Wade, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

COURT PROCEEDINGS

United States v. Christopher Wade, 4:19-CR-153 Northern District of Mississippi; Judgment entered on March 29, 2022.

United States v. Christopher Wade, Fifth Circuit Case Number 22-60184; Order affirming district court entered on March 31, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Christopher Wade, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The Fifth Circuit's opinion was issued unpublished on March 31, 2023. *See* Appendix A.

The district court entered the Judgment sentencing Mr. Wade to 96 months' imprisonment on March 29, 2022. The Judgment is attached as Appendix B.

JURISDICTION

This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit Judgment. *See* Rule 13.1 of the Supreme Court Rules. The jurisdiction of this Court to review the judgment of the Fifth Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

This petition involves the Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

On September 4, 2019, the United States Marshals Service executed a warrant at the last known address for Mr. Wade for a parole violation with the Mississippi Department of Corrections. ROA. 396¹. During the search of the residence, agents discovered Mr. Wade sheltering beneath a jacuzzi-style bathtub in the residence, and a firearm was located in the space immediately beneath him. ROA. 396. On December 4, 2019, Mr. Wade was charged in a one-count indictment in the Northern District of Mississippi for firearm possession, in violation of 18 U.S.C. § 922(g)(1). ROA. 14. On June 7, 2021, Mr. Wade pled guilty and was convicted of felon in possession of a firearm. ROA. 395; *see also* Appendix B.

Prior to sentencing, Mr. Wade objected to the proposed application of a fifteen-year mandatory minimum to his sentence, pursuant to the Armed Career Criminal Act (ACCA) in 18 U.S.C. § 924(e). ROA. 378-383, 397. Mr. Wade argued his prior Mississippi conviction for conspiracy to distribute drugs could not qualify as a “serious drug offense” under the ACCA because the elements of conspiracy, as defined by Mississippi law, did not establish that Mr. Wade’s underlying conduct “involve[d] manufactur[ing], distribution, or possession with intent.” 18 U.S.C. § 924(e)(2)(A)(ii); *see also* Miss. Code Ann. § 97-1-1.

At sentencing, the district court overruled Mr. Wade’s objection and concluded that his prior underlying conduct did involve manufacturing, possessing, and distributing. ROA. 349. Application of the ACCA increased Mr. Wade’s Guideline

¹ ROA references the Record on Appeal in this matter. If requested, the ROA can be forwarded to opposing counsel and the Court.

range from 77-96 months to 180-210 months, more than double the original sentencing range.

However, based on the prosecution's motion, the district court granted a downward departure and sentenced Mr. Wade to 96 months. *See* Appendix B. The district court stated it would have given the same sentence even if the court was wrong about the ACCA enhancement. ROA. 363-64. A timely Notice of Appeal was entered.

On appeal, Mr. Wade advanced two arguments. First, that the elements for conspiracy under Mississippi state law did not establish that Mr. Wade's conduct "involved manufacture, distribution or possession with intent," as required by the ACCA's plain language and this Court's precedent in *Shular v. United States*, 140 S. Ct. 779 (2020). The district court erred by making independent factual findings beyond the statutory elements of Mr. Wade's prior state conviction and erroneously relying on those findings in applying ACCA penalties to Mr. Wade's case.

Because Mississippi law defines conspiracy as a crime of agreement only, there were no facts before the district court to support its findings regarding Mr. Wade's past conduct. *See* Miss. Code Ann. § 97-1-1. The district court's investigation into Mr. Wade's past conduct violated the Sixth Amendment because it extended beyond the statutory elements of Mr. Wade's prior conviction and into "legally extraneous but amplifying circumstances." *Descamps v. United States*, 570 U.S. 254, 279-280 (2013). Accordingly, the district court's role in "making findings about underlying conduct . . . raised serious Sixth Amendment concerns" because Mr. Wade was

designated an armed career criminal, drastically increasing his minimum sentence. *United States v. Davis*, 139 S. Ct. 2319, 2327 (2019).

Second, Mr. Wade argued the district court's stated reasoning at sentencing was illusory and intended to circumvent meaningful appellate review. Specifically, the ACCA's application increased Mr. Wade's Guidelines range from 77-96 months to 180-210 months. Based on the prosecution's motion for downward departure, the district court sentenced Mr. Wade to 96 months – departing downward nearly fifty percent from the bottom of the Guideline range. In support thereof, the district court specifically cited Mr. Wade's substantial assistance as the reason for the departure. ROA. 362-63. However, the district court then stated it would render the same sentence of 96 months again, even if it were wrong about the ACCA's application, thereby proposing to deny Mr. Wade of the downward departure if the ACCA did not apply. ROA. 363.

In a per curiam opinion with concurrence, Mr. Wade's sentence was affirmed for harmless error doctrine under *United States v. Guzman-Rendon*. See *United States v. Wade*, No. 22-60184, 2023 WL 2733425 at *1 (5th Cir. Mar. 31, 2023). The panel opinion focused on the district court's statement that it would nonetheless impose the same sentence regardless of whether the court was correct about the ACCA's application. *Id.* The panel failed to consider any procedural methods used by the district court or the substantive reasonableness of the sentence, nor did it consider whether any errors had actually occurred at sentencing. Rather, finding

that harmless error doctrine was invoked by the district court's statement, the panel held that "any potential error" had been cured by the same. *Id.*

The panel also declined to address the logical discrepancies in the district court's stated rationale for sentencing, in particular its grant of a downward departure for Mr. Wade's substantial assistance.

In a concurrence, Judge Graves separately addressed the underlying substantive argument to Mr. Wade's appeal, finding that conspiracy, as defined by Mississippi law, did not qualify as a "serious drug offense" for inclusion under the ACCA. *Id.* at *2.

Mr. Wade, Petitioner, now seeks review by this Court to settle these important questions of federal law that conflict with relevant decisions of this Court.

REASONS FOR GRANTING THIS PETITION

“[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guideline Range . . . the Guidelines should be the starting point and the initial benchmark.” *Gall*, 552 U.S. at 50. Sentencing courts must then consider the factors enumerated in 18 U.S.C. § 3553 after “*correctly* calculating the applicable Guideline range.” *Id.* at 49 (emphasis added).

In *Gall*, this Court reiterated from *Rita* the methods appellate courts must follow when reviewing a sentence under the abuse-of-discretion standard: “first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence” *Id.* at 51 (citing *Rita v. United States*, 551 U.S. 338, 347-348 (2007)). After reviewing the district court’s procedural methods, appellate courts must consider “the substantive reasonableness of the sentence . . . tak[ing] into account the totality of the circumstances, including the extent of any variance from the Guidelines range.” *Id.*

A. The Fifth Circuit’s precedent in *United States v. Guzman-Rendon* allows automatic application of harmless error doctrine to cure virtually all errors committed by sentencing courts and bypass meaningful appellate review.

In the present case, the Fifth Circuit applied its precedent in *Guzman-Rendon* and found that harmless error doctrine applied to “any potential error” committed at Mr. Wade’s sentencing. *Wade*, 2023 WL 2733425, at *1. Specifically, under *Guzman-*

Rendon standard, the prosecution needed only to show that “the district court considered both ranges . . . and explained that it would give the same sentence either way.” *Id.* (citing *Guzman-Rendon*, 864 F.3d at 411). The Fifth Circuit noted the district court “stated it would nonetheless impose the same sentence regardless of whether it was correct about the ACCA enhancement. Specifically, the district court explained that its sentence was based on . . . Wade’s extensive criminal history, his family background, his ongoing mental health issues, and his history of drug use.” *Id.* Ultimately, the Fifth Circuit concluded that “any potential error committed by the district court was harmless.” *Id.*

1. Application of *Guzman-Rendon* allows the Fifth Circuit to bypass meaningful appellate review in favor of automatic affirmation.

The Fifth Circuit’s appellate review of Mr. Wade’s case was woefully deficient and plainly inconsistent with the review procedures mandated by this Court in *Gall* and *Rita*. The Fifth Circuit was required to “ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating the Guidelines range . . . selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence.” *Gall*, 552 U.S. at 49.

At Mr. Wade’s sentencing, multiple procedural errors occurred. First, the district court failed to correctly calculate the Guidelines range when it erroneously applied a fifteen-year mandatory minimum pursuant to the ACCA. In doing so, the district court relied on “clearly erroneous facts” by finding that Mr. Wade’s conduct in connection with his prior state conviction had involved distribution. *Id.*; *see also*

ROA. 349. The district court's findings were made even after the court was advised by the prosecution that it had no knowledge of the factual basis and that such inquiries were impermissible for the purposes of enhancing a sentence. ROA. 349. This was clearly erroneous because there were no facts before the district court to support its findings, nor were these facts established by the statutory elements of Mr. Wade's prior conviction under Mississippi law. *See* Miss. Code Ann. § 97-1-1. This plainly evidences the district court's reliance on its own understanding of "legally extraneous circumstances" in applying the ACCA. *Descamps*, 570 U.S. at 279-80. This was procedural error and a blatant violation of the Sixth Amendment because "the Sixth Amendment contemplates that a jury – not a sentencing court – will find such facts, unanimously and beyond a reasonable doubt. And the only facts the [sentencing] court can be sure the jury so found are those constituting elements of the offense – as distinct from amplifying but legally extraneous circumstances." *Id.*

Lastly, the district court failed to adequately explain the chosen sentence. Although the district court did engage in a consideration of the 18 U.S.C. § 3553(a) factors, the district court's stated reasoning defied logic when it granted a significant downward departure based on Mr. Wade's substantial assistance, but then proposed to deny Mr. Wade of the same benefit in order to render the same sentence if the ACCA did not apply to his case. ROA. 363. In fact, if the ACCA did not apply, the district court proposed that it would impose a sentence at the top of the new Guideline range instead. ROA. 363-64.

The district court's stated rationale is illogical. The district court specifically ruled that Mr. Wade deserved "credit for his substantial assistance" through the grant of a downward departure. ROA. 362-63. Simple logic dictates that Mr. Wade deserved the same credit for his assistance regardless of whether the ACCA applied to his case or not. The two aspects are in no way connected. The district court's statement evidences a capriciousness not rationally related to the justification set forth by the district court on the record. For this reason, the district court's reasoning was inadequate to allow for "meaningful appellate review and to promote the perception of fair sentencing." *Gall*, 552 U.S. at 50.

Despite these errors, the Fifth Circuit gave no consideration to the procedural methods utilized by the district court at sentencing. *Wade*, 2023 WL 2733425, at *1. Rather, based on a single sentence from the district court, the Fifth Circuit unceremoniously applied harmless error doctrine to Mr. Wade's case as one might slap a Band-Aid across a scrape and proclaimed his sentencing cured of "any potential error." *Id.* This pronouncement occurred even before the Fifth Circuit determined whether an error had occurred and, if so, what ramifications such error might have had.

The Fifth Circuit's liberal application of harmless error doctrine fails to follow the most basic tenants of sentencing stated in *Gall* and *Rita* because it allows sentencing courts to cure any and all sentencing errors merely by declaring that the same sentence would be given regardless of any potential error. By allowing automatic application of harmless error doctrine based on these types of statements,

the Fifth Circuit has turned harmless error doctrine into a rubber stamp of affirmation to be invoked at will by sentencing courts as they proceed with conducting independent investigations and handing down arbitrary judgments. If a sentencing court can cure any mistake by declaring the same sentence would be rendered regardless, then the court has entirely independent discretion to apply any sentence it chooses. Correct application of the Guidelines becomes optional because “any potential error” made by the sentencing court can be simultaneously cured by the sentencing court’s statement under the *Guzman-Rendon* standard. *Id.*

Never has this Court so endorsed the use of “lipservice to the Guidelines” or the use of doctrine of harmless error as the bypass of “meaningful appellate review and . . . the perception of fair sentencing.” *Gall*, 552 U.S. at 49, 63. The Fifth Circuit’s holding is entirely contrary to *Gall* because it abrogates any need for the district court to determine the correct Guideline range, and instead promotes wholly independent inquiry and discretion by allowing sentencing courts to simultaneously bypass appellate scrutiny through the invocation of a singular phrase. Certiorari is warranted to reaffirm the standards for appellate review in sentencing created by this Court.

B. The Fifth Circuit’s application of harmless error doctrine conflicts with standards used by other appellate circuits.

Further, the Fifth Circuit’s application of harmless error doctrine from *Guzman-Rendon* is amongst the most liberal method of application of any appellate circuit, and it starkly disagrees with standards used by numerous other circuits. For example, the Third Circuit has specifically held that “the sentencing Court’s

explicit statement that it would have imposed the same sentence under two different ranges. . . will not always suffice to show that an error in calculating the Guidelines range is harmless.” *United States v. Zabielski*, 711 U.S. 381, 389 (3rd Cir. 2013). Similarly, the Second Circuit has held harmless error could not apply to errors which are structural or “necessarily render[] a criminal [proceeding] fundamentally unfair or ... unreliable.” *Shabazz v. United States*, 923 F.3d 82 (2nd Cir. 2019) (quoting *Washington v. Recuenco*, 548 U.S. 212, 218 (1993)).

Additionally, the Fourth Circuit declined to apply the doctrine of harmless error where a defendant received a sentencing enhancement based on facts not charged in the indictment or found by a jury, finding that this amounted to plain error – not harmless error. *United States v. Allen*, 124 Fed. Appx. 769 (4th Cir. 2005). These decisions plainly conflict with the Fifth Circuit’s application of harmless error in *Guzman-Rendon* and the present case.

C. This Court has not addressed the use of harmless error doctrine within the context of sentencing.

Finally, this case presents a novel question before this Court. The doctrine of harmless error appears to exist almost exclusively amongst the appellate circuits, with little guidance from this Court regarding the application of harmless error within the context of sentencing.

In *Chapman*, this Court generally recognized that some constitutional errors can be harmless in nature, stating: “there may be some constitutional error which in the setting of a particular case are so unimportant and insignificant that they may,

consistent with the federal constitution, be deemed harmless” *Chapman v. California*, 386 U.S. 18, 22 (1967).

In his concurrence to *Rose v. Clark*, Justice Stevens further acknowledged the dangers of liberal application of harmless error, finding that “an automatic application of harmless-error review in case after case, and for error after error, can only encourage prosecutors to subordinate the interest in respecting the Constitution to the ever-present and always powerful interest in obtaining a conviction in a particular case.” *Rose v. Clark*, 478 U.S. 570, 588 (1986). Although *Rose* addresses harmless error within the context of a criminal trial, the same sentiment aptly applies to the present case because harmless error doctrine has become the rubber stamp of affirmation to cure all sentencing errors in the Fifth Circuit.

Various standards have been created and promoted amongst the appellate circuits which both conflict with each other and with this Court’s precedents in *Gall* and *Rita*. It is now necessary for this Court to clarify how harmless error doctrine relates to errors committed in violation of a defendant’s constitutional rights at sentencing. Certiorari is warranted to reaffirm the standards for appellate review in sentencing created by this Court.

CONCLUSION

For the foregoing reasons, Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit and allow him to proceed with briefing on the merits and oral argument.

Dated: June 20, 2023

Respectfully submitted,

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IN THE
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CHRISTOPHER WADE - PETITIONER

v.

UNITED STATES OF AMERICA - RESPONDENT

PROOF OF SERVICE

I, the undersigned counsel of record, do swear or declare that on this date, June 20, 2023, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above document in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States,
Room 5614, Department of Justice
950 Pennsylvania Ave.,
N.W., Washington, D. C. 20530-0001

Office of the U.S. Supreme Court Clerk
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 20th, 2023.

/s/ Kelsey L. Dismukes
KELSEY L. DISMUKES